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No. 91-1049

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

JAMES H. RUCKER, *et al.*,

Petitioners,

v.

HARFORD COUNTY, *et al.*,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

J. JOSEPH CURRAN, JR.
Attorney General of Maryland

CARMEN SHEPARD*
ANDREW H. BAIDA
STUART M. NATHAN
Assistant Attorneys General
200 St. Paul Place, 20th Floor
Baltimore, Maryland 21202
(410) 576-7291

Attorneys for Respondents

**Counsel of Record*

[Additional counsel for Respondents listed on inside cover]

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

JEFFERSON L. BLOMQUIST
Deputy Solicitor
Harford County Department
of Law
220 S. Main Street
Bel Air, Maryland 21014
(301) 879-2000

PHILIP M. ANDREWS
KRAMON AND GRAHAM, P.A.
Sun Life Building
20 S. Charles Street
Baltimore, Maryland 21201
(410) 752-6030

MICHAEL J. TRAVIESO
GALLAGHER, EVELIUS AND JONES
218 N. Charles Street
Baltimore, Maryland 21201
(410) 727-7702

COUNTERSTATEMENT OF QUESTIONS PRESENTED FOR REVIEW

1. Did the courts below correctly hold that a bystander, who refuses to leave the scene of a police arrest, was not "seized" within the meaning of the Fourth Amendment when he was inadvertently injured by police officers attempting to stop a drugged suspect who posed a threat of serious physical injury to the officers and the public?

2. Did the Fourth Circuit properly decide on this record that substantive due process did not protect a bystander against being unintentionally injured by police officers attempting to apprehend a fleeing and dangerous criminal suspect?

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COUNTERSTATEMENT OF THE CASE

This case stems from the chase and apprehension of Jerry Mace who, after taking a Ford Bronco without permission while in a state of extreme crack cocaine intoxication, embarked on a dangerous, reckless ride that resulted in the accidental shooting of David Rucker. James H. Rucker filed this action on

behalf of himself and his son, David (collectively "Petitioners").

A. Undisputed Material Facts.

Petitioners attempt to recharacterize Mace simply as a driver under the influence of alcohol, whose sole misconduct consisted of failing to pay a toll and driving at excessive speeds. Pet. at 4. The undisputed facts of record, however, demonstrate that Mace's crazed and uncontrollable conduct put everyone in his path in imminent threat of serious injury, thus leading the Fourth Circuit to conclude that Mace was "a madman run amok, threatening the lives of everyone in his way." (App. at 11a.)

After spending the night of July 27, 1987 and the morning of July 28 smoking crack cocaine, Mace stole a friend's Ford Bronco and drove south on Interstate 95 ("I-95"). (App. at 4a.) Maryland State Trooper Carl F. Pearsall received a report that a Bronco was

being driven recklessly on I-95, had "run" a toll booth without paying the toll, and was being operated by a driver suspected of being intoxicated. (App. at 4a.) Shortly thereafter, Pearsall spotted Mace on I-95, turned on his emergency equipment and attempted to overtake him. (Id.) Mace refused to stop for Pearsall, and instead continued driving erratically, reaching speeds up to 110 miles per hour, weaving in and out of traffic, and almost hitting several cars. (Id.) Mace drove through a busy rest area at approximately 70-80 miles per hour, and at one point drove onto a median strip where he spun the car in circles and was seen dancing in the Bronco. (Id.)

Mace eventually stopped in the median directly in front of Pearsall's car, but when Pearsall attempted to apprehend him, Mace sped away driving south in the middle of the northbound lanes of I-95. (Id.) He

continued this way for approximately 1½ miles, with the oncoming traffic swerving to avoid him, and ultimately exited I-95 against traffic, via the northbound entrance ramp onto Route 24. (Id.)

After the State Police briefly lost sight of Mace, Trooper James Gruver spotted the Bronco stopped at the intersection of Hanson Road and Route 152 and got out of his vehicle to approach Mace. (App. at 4a.) Mace immediately sped away, barely avoiding another head-on collison. (Id.) Harford County Deputy Sheriff David Alexander stationed himself up the road to stop traffic heading into the path of the Bronco and to assist Gruver in stopping Mace. (Id.) Mace turned left onto a small field adjoining a family's residence, followed by Gruver who saw Mace again driving the Bronco in circles. (App. at 5a.) Mace drove the Bronco directly at Gruver's car, forcing

Gruver to swerve to avoid a collision, and sped down Trimble Road for about a mile until he veered up an embankment and into a cornfield on the Heine farm, where the Bronco was hidden from view. (Id.)

Deputy Sheriffs Stephen Bodway, Charles Hellman, Gary Vernon, and Ricky Williams arrived on the scene to render assistance to Alexander and Gruver. (App. at 5a.) Alexander, Hellman, Gruver and Vernon positioned themselves at roughly the three corners of the cornfield accessible to vehicles, effectively establishing a perimeter so as to block any attempts by Mace to escape. (Id.)

That same evening, David Rucker drove his employers, Michael and Valerie Baublitz, and their three children onto Trimble Road and headed toward the Heine driveway. (App. at 5a.) A sheriff's patrol car blocked Trimble Road beyond the driveway. (Id.)

Unable to proceed further, Rucker turned into the driveway, stopped his car and, accompanied by Michael Baublitz, approached Deputy Vernon to find out what was going on. (Id.) Vernon told them that police officers were trying to apprehend a suspect in the cornfield and ordered them to leave. (Id.) In response, Rucker moved his car as ordered. (Id.) Mrs. Baublitz and the children remained in the car. Unbeknownst to the officers, Rucker and Mr. Baublitz left the vehicle at some point, returning to the vicinity of the cornfield. (Id.)

Deputy Bodway proceeded along the edge of the field as Deputy Alexander motioned him toward the suspected location of the Bronco. (App. at 6a.) Once in the field, Bodway spotted Mace in the Bronco, drew his weapon and ordered Mace to freeze and exit the Bronco. (Id.) Instead of surrendering, Mace accelerated, sending dirt into the face

of Bodway, who fired shots at the Bronco's tires. (Id.) Mace did not stop but drove through the field toward the Heine driveway where Vernon was standing. (Id.) As Vernon looked down the driveway, he saw Deputy Williams, and, behind Williams, Michael Baublitz, at whom Vernon shouted to move out of the way. (Id.) Vernon watched as Baublitz turned and ran along Trimble Road, away from the field, and disappeared from sight. (Id.)

Mace then attempted to escape from the cornfield, first driving at the embankment bordering the Heine driveway, immediately in front of Vernon. (App. at 6a.) Vernon yelled to Mace to stop, but Mace refused. (Id.) As Mace drove the Bronco down the driveway toward Trimble Road, Vernon crouched and fired six shots at the right rear tire of the escaping Bronco. (Id.) When these efforts to stop Mace failed, Vernon then

fired six more shots at the tires as the Bronco continued on the path toward Trimble Road. (Id.) The Fourth Circuit assumed for the purposes of this case that one of these shots hit Rucker, who was apparently lying on top of an embankment on the other side of Trimble Road. (Id.)[1] Two other officers fired at the Bronco. (App. at 7a.) Shortly after the tires collapsed, Mace abandoned the vehicle and was apprehended after he fled on foot. (Id.)

B. Proceedings Below.

Petitioners brought this action alleging numerous claims against the officers who attempted to arrest Mace, as well as their

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[1] Although Petitioners assert that "Vernon was able to see David Rucker across Trimble Road at the time of firing," Pet. at 7, Vernon testified he could not. (App. at 6a-7a.) A witness who was sitting in Vernon's car in the driveway testified in deposition that she could see Rucker from her vantage point, which was some distance from where Vernon fired. (App. at 7a.) The Fourth Circuit found, however, that "[t]he relative locations of Vernon and this witness, the relevant topography of the area at the time, are not clear enough to refute Vernon's claim that he did not see Rucker." (App. at 12a.)

supervisors and Harford County, seeking monetary relief for David Rucker's injuries. (App. at 7a.) Petitioners alleged an unconstitutional seizure in violation of the Fourth Amendment, violation of parental rights assertedly protected by the Fourteenth Amendment and several state law claims.

Following two years of extensive discovery, Respondents moved for summary judgment on all counts. The district court held a hearing and thereafter granted Respondents' motions. The Fourth Circuit affirmed, holding that on the undisputed facts in the record, Rucker was not "seized" within the contemplation of the Fourth Amendment, nor did the state action complained of constitute the oppressive abuse of governmental power proscribed by substantive due process under the Fourteenth Amendment. (App. at 8a-13a). The petition to this Court followed.

REASONS FOR DENYING THE WRIT

The Petition Does Not Present A Substantial Federal Question

Because the decision below conforms with prior decisions of this Court and other federal appellate courts, further review of this case is unwarranted. Simply put, this is a factually unique case that raises no novel or unsettled questions of federal law on which the lower federal courts require the guidance of this Court.

A. A Bystander Inadvertently Struck By A Bullet Directed At A Suspect Does Not Have A Fourth Amendment Claim.

The Fourth Circuit held that the Fourth Amendment claim raised by Petitioners "is directly foreclosed" by Brower v. County of Inyo, 109 S.Ct. 1378 (1989) (App. at 8a), where the Court held that a person is "seized" for purposes of the Fourth Amendment only when that person is the intended object of a physical restraint. The court below

found that, because the undisputed summary judgment record shows that "Rucker was not the intended object of the shooting by which he was injured, he was not thereby 'seized' within contemplation of the fourth amendment." (App. at 9a.)

The Fourth Circuit correctly interpreted this Court's decision in Brower, which held that neither the "unintended consequences of government action" nor "the accidental effects of otherwise lawful government conduct" constitute a seizure. 109 S.Ct. at 1381. There is no reason to review the Fourth Circuit's unexceptional and straightforward application of Brower to the undisputed facts before it.

Nor is review warranted to resolve a supposed conflict between the decision below and other appellate decisions. Pet. at 10-11. The cases cited by Petitioners are

entirely consistent with the Fourth Circuit's holding that no seizure can occur unless the person restrained is the intended object of the act of restraint. Compare Roach v. City of Fredericktown, 882 F.2d 294, 296 (8th Cir. 1989) (no seizure where the defendant "did not intend for the pursuit to end by means of an accident with another vehicle") with Jamieson v. Shaw, 772 F.2d 1205, 1210 (5th Cir. 1985) (pre-Brower decision holding that plaintiff "was 'seized' for purposes of the Fourth Amendment when the officers deliberately placed the roadblock in front of the car in which they knew she was a passenger"). Indeed, a number of other circuit court decisions following Brower have similarly held that facts comparable to those here give rise to no Fourth Amendment seizure.[2] The lower federal courts clearly

[2] See, e.g., Campbell v. White, 916 F.2d 421, 423 (7th Cir. 1990), cert. denied, 111 S.Ct. 1314 (1991); Landol Rivera v. Cruz Cosme, 906 F.2d 791, 798 (1st Cir. 1990); Apodaca v. (footnote cont'd)

need no further guidance on this issue.

B. The Fourth Circuit Correctly Applied A Substantive Due Process Standard In Rejecting Petitioners' Fourteenth Amendment Claim.

Petitioners also contend that this Court's decision in Graham v. Connor, 109 S.Ct. 1865 (1989), required the Fourth Circuit to analyze their Fourteenth Amendment claim under the Fourth Amendment's "reasonableness" standard instead of under substantive due process principles. Pet. at 19. However, Graham holds only that excessive force claims that arise "in the course of an arrest, investigatory stop, or other 'seizure' of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard, rather than under a 'substantive due process' approach." 109 S.Ct. at 1871 (emphasis added). Because

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Rio Arriba County Sheriff's Dept., 905 F.2d 1445, 1447 (10th Cir. 1990); United States v. Lockett, 919 F.2d 585, 590 n. 4 (9th Cir. 1990).

Rucker was not "seized" by the governmental conduct he challenges, the Fourth Amendment "reasonableness" standard is inapplicable here. (App. at 9a) ("the fourth amendment's specific protection against unreasonable seizures of the person does not, by definition, extend to unintentionally injured 'bystanders' such as Rucker"). This analysis is consistent with Graham and other decisions of this Court.[3]

Nor did the Fourth Circuit commit any other error worthy of this Court's review in resolving Petitioner's Fourteenth Amendment claim. Substantive due process "bars certain

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[3] See Graham, 109 S.Ct. at 1871 ("Because the Fourth Amendment provides an explicit textual source of constitutional protection against this sort of physically intrusive governmental conduct, that Amendment, not the more generalized notion of 'substantive due process,' must be the guide for analyzing these claims."). See also Bell v. Wolfish, 441 U.S. 520, 535-39 (1979) (Due Process Clause protects pretrial detainees from arbitrary or purposeless conduct); Ingraham v. Wright, 430 U.S. 651, 664-74 (1977) (Due Process Clause and not Cruel and Unusual Punishments Clause of the Eighth Amendment applies to disciplinary corporal punishment in public schools).

arbitrary, wrongful government actions," Zinermon v. Burch, 110 S.Ct. 975, 983 (1990), quoting Daniels v. Williams, 474 U.S. 327, 331 (1986), and "prevents the government from engaging in conduct that 'shocks the conscience'. . . ." United States v. Salerno, 481 U.S. 739, 746 (1987), quoting Rochin v. California, 342 U.S. 165, 172 (1952). To be actionable, the injury attributed to governmental conduct must implicate "deliberate decisions of government officials to deprive a person of life, liberty, or property," Daniels v. Williams, 474 U.S. at 331, and not result from mere "lack of due care. . . ." Davidson v. Cannon, 474 U.S. 344, 347 (1986).

Because "it is undisputed that [Rucker's] shooting was purely accidental," (App. at 12a), the Fourth Circuit found it unnecessary to decide whether the challenged conduct could even rise to the level of negligence, concluding that this accidental

shooting certainly could not "constitute[] the kind of 'oppressive' abuse of governmental power, see Daniels, 474 U.S. at 331, against which substantive due process gives protection." (App. at 12a.) This straightforward application of the principles this Court enunciated in Daniels and Davidson involves no error that warrants this Court's exercise of its discretionary authority.

CONCLUSION

For the reasons stated, the petition should be denied.

Respectfully submitted,

J. JOSEPH CURRAN, JR.
Attorney General of Maryland

CARMEN SHEPARD*
ANDREW H. BAIDA
STUART M. NATHAN
Assistant Attorneys General
200 St. Paul Place, 20th Floor
Baltimore, Maryland 21202
(410) 576-7291

JEFFERSON L. BLOMQUIST
Deputy Solicitor
Harford County Department
of Law
220 S. Main Street
Bel Air, Maryland 21014
(301) 879-2000

PHILIP M. ANDREWS
Kramon and Graham, P.A.
Sun Life Building
20 S. Charles Street
Baltimore, Maryland 21201
(410) 752-6030

MICHAEL J. TRAVIESO
Gallagher, Evelius and Jones
218 N. Charles Street
Baltimore, Maryland 21201
(410) 727-7702

Attorneys for Respondents

*Counsel of Record

A:DPC:AHB9204